

**MINUTES OF THE GOVERNING BOARD
OF THE ANTELOPE VALLEY AIR QUALITY MANAGEMENT DISTRICT
LANCASTER, CALIFORNIA**

AGENDA ITEM 5

DATE: September 20, 2011

RECOMMENDATION: 1. Conduct a public hearing to consider the adoption of Rule 315 – *Federal Clean Air Act Section 185 Penalty*; 2. Continue hearing to October 18, 2011.

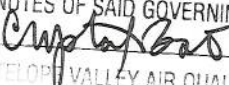
SUMMARY: The proposed amendment of Rule 315 is necessary to implement the requirements of Section 185 of the Federal Clean Air Act, and to stop potential sanctions being imposed by the United States Environmental Protection Agency (USEPA) as identified in 75 FR 232, January 5, 2010, through the adoption of a non-attainment area fee equivalency strategy. Continuation is necessary to address substantive comments by USEPA and California Air Resources Board (CARB) staff.

BACKGROUND: The Antelope Valley Air Quality Management District (AVAQMD) originally adopted Rule 315 – *Federal Clean Air Act Section 185 Penalty* on February 15, 2011. The AVAQMD submitted Rule 315 to the CARB on March 3, 2011 requesting inclusion in the State Implementation Plan (SIP), and CARB submitted Rule 315 to the USEPA on April 22, 2011 as a revision to the SIP. USEPA made a finding of completeness on May 19, 2011, which reset the sanction clock, but not the Federal Implementation Plan (FIP) clock. The AVAQMD is now amending Rule 315 to include additional provisions at the request of USEPA to make the rule approvable and eliminate the possibility of sanctions as well as a FIP.

Rule 315 was adopted to implement a mandatory penalty pursuant to Section 185 of the Federal Clean Air Act (42 U.S.C. §7511d) within the AVAQMD portion of the Southeast Desert Modified Air Quality Maintenance Area (AQMA). 42 U.S.C. 7511d (Federal Clean Air Act Section 185, or Section 185) requires the imposition of a penalty of \$5,000 per ton (adjusted for inflation) on major facilities within ozone non-attainment areas that fail to meet the severe or extreme ozone attainment date unless such major facilities have reduced their ozone precursor emissions by twenty percent (20%) from a baseline amount. The jurisdiction of the AVAQMD is located entirely within the AQMA which failed to meet the one-hour ozone standard on or before 2007. Therefore the AVAQMD is subject to the provisions of Section 185. The USEPA made a finding of a failure to submit a rule implementing the penalty provisions of Section 185 on January 5, 2010 (75 FR 232) which started a SIP eighteen (18) month sanction clock. Potential sanctions

cc: Tracy Walters

ITEM CONTINUED TO OCTOBER 18, 2011.

I, CRYSTAL BATES, DEPUTY CLERK OF THE GOVERNING BOARD
OF THE ANTELOPE VALLEY AIR QUALITY MANAGEMENT
DISTRICT, HEREBY CERTIFY THE FOREGOING TO BE A
FULL, TRUE AND CORRECT COPY OF THE RECORD OF
THE ACTION AS THE SAME APPEARS IN THE OFFICIAL
MINUTES OF SAID GOVERNING BOARD MEETING
 DEPUTY CLERK OF THE BOARD
ANTELOPE VALLEY AIR QUALITY MANAGEMENT DISTRICT

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include an increase in the new source review offset ratio and suspension of federal highway transportation funding. Rule 315 was designed to implement the provisions of Section 185 and to stop the sanction clock upon approval of the submission by USEPA. The submission of Rule 315 was found to be complete by USEPA, which stopped the sanction clock, but not the FIP clock. Under a FIP, USEPA, not the state, determines what steps must be taken to implement Section 185. For the FIP clock to be turned off, USEPA must approve the SIP within 24 months of publishing the finding of the rule as not approvable. The AVAQMD is now amending Rule 315 to include additional provisions at the request of USEPA to make the rule approvable, thus removing potential sanctions as well as a FIP.

A Notice of Exemption, Categorical Exemption (Class 8; 14 Cal. Code Reg. §15308) will be prepared by the AVAQMD for the amendment of Rule 315 pursuant to the requirements of CEQA.

REASON FOR RECOMMENDATION: Health & Safety Code §§40702 and 40703 require the Governing Board to hold a public hearing before adopting rules and regulations. Also, 42 U.S.C. §7410(l) (FCAA §110(l)) requires that all SIP revisions be adopted after public notice and hearing. Continuation is necessary to address substantive comments by United States Environmental Protection Agency (USEPA) and California Air Resources Board (CARB) staff.

REVIEW BY OTHERS: This item was reviewed as to legal form by Karen Nowak, District Counsel and by Eldon Heaston, Executive Director on or before September 6, 2011.

FINANCIAL DATA: No increase in appropriation is anticipated.

PRESENTER: Bret Banks, Operations Manager